Proceeding: In the matter of 1998 Biennial Regulatory Review - Review of International Com Record 1 of 1
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
1988 Biennial Regulatory Review --	)	
Review of International Common Carrier	)	IB Docket No. 98-118
Regulations	)	
	)	

To: The Commission

REPLY COMMENTS OF BELLSOUTH CORPORATION

BellSouth Corporation ("BellSouth"), on behalf of itself and its affiliates, by its attorneys, respectfully submits the following reply comments in support of the rule changes proposed by the Commission in the above-captioned proceeding. BellSouth also opposes certain aspects of the comments filed by MCI Telecommunications Corporation on August 14, 1998 (the "MCI Comments").

The vast majority of commenters were very much in favor of the streamlining initiatives proposed by the Commission in the Notice of Proposed Rulemaking (FCC 98-149, released July 14, 1998, 63 FR 39793 (Jul. 24, 1998) *corrected* 63 FR 41538 (Aug. 4, 1998)) ("NPRM"). In particular, the tentative conclusions to utilize a blanket section 214 authorization and to forego prior review and approval of *pro forma* transfers and assignments were well received. *See, e.g.*, Comments of Cable & Wireless at 3-4, Comments of Bell Atlantic at 2-4, Comments of Competitive Telecommunications Association at 2-3, Comments of Iridium U.S., L.P. at 2-4,

Comments of Deutsche Telecomm AG at 2-3, Comments of Facilicom International, L.L.C., in Support of Proposed Rule Changes at 2, and Comments of Excel Telecommunications, Inc. at 1-2.

Other filers also agreed with some or all of the Commission's proffered expansions of the use of blanket authorizations to include foreign destinations where: (i) the Commission has previously found that a U.S. carrier's foreign affiliate lacks market power; (ii) the foreign affiliate is a pure reseller; or (iii) the foreign affiliate is in the foreign destination the equivalent of a Commercial Mobile Radio Services provider in this country. *See, e.g.*, Comments of Primus Telecommunications, Inc. in Support of Proposed Rule Changes at 2 (all three proposed expansions), Comments of Ameritech at 5 (CMRS expansion only), Comments of the Competitive Telecommunications Association at 2-3 (CMRS and resale carriers), Comments of Bell Atlantic at 2-4 (where the foreign affiliate has been found to lack market power), and Comments of SBC Communications Inc. on the Notice of Proposed Rulemaking Regarding International Common Carrier Regulations at 4-7 (where the foreign affiliate lacks market power).

As noted by one commenter, the proposed expansions of the blanket authorizations would "increase competition in the international telecommunications market while maintaining the Commission's ability to condition or revoke licenses if evidence of anticompetitive behavior has been proven." *See* Comments of Cable & Wireless at 4; *see also* Comments of Iridium U.S., L.P. at 3 ("international wireless services . . . providers have neither the incentive nor the ability to act anticompetitively"), and Comments of GTE at 2. Broadening the scope of the blanket authorizations will benefit the Commission by reducing unnecessary workload on the staff; it

will serve the public interest by eliminating unneeded regulatory delay and facilitating competition; and it will not harm the public interest because foreign affiliates of the type enumerated above do not wield market power in their foreign markets.

Proposed Rule 63.21(i), if adopted, would permit subsidiaries of an authorized carrier, absent any structural separation requirement, to "provide service through any wholly owned subsidiaries without seeking additional Commission authorization." *See* NPRM at 10 and A-9. Many commenters support this proposal. *See, e.g.*, Iridium U.S., L.P. at 5, Comments of Bell Atlantic at 5, and Comments of WorldCom, Inc. at 3. However, a number of commenters that addressed proposed Rule 63.21(i) advocate expanding the scope of the proposed rule. They would have it include "sister-affiliates," "partnerships in which the carrier has a controlling interest," Comments of GTE at 5, and "parent companies and affiliates who operate under the same corporate structure and have the same foreign carrier affiliates as the subsidiary" Comments of Cable & Wireless at 4-6.

BellSouth is in agreement with allowing entities in the same corporate family to rely on a single Section 214 authorization. The proposed rule should be written to permit entities related vertically (parents and subsidiaries) and horizontally (brother/sister corporations and partnerships and their parents and subsidiaries) to benefit from one Section 214 authorization. The Commission has ample authority to take enforcement action against the authorization holder for the transgressions of a related subsidiary or affiliate.

MCI takes a contrary position to the direction the Commission appears to be headed—lessening regulation. MCI argues for more Section 214 filings. According to MCI, any carrier with a foreign affiliation, even with only a wireless carrier in a foreign destination, should have

to file an application to serve the affiliated route. *See* Comments of MCI Telecommunications Corp. at 4. The reason given by MCI as to why regulation should not be streamlined is that "applicants' foreign affiliations can raise unique concerns." *Id.* MCI does not enlighten the Commission about these "unique concerns." Based on the overwhelming support of the other commenters in favor of the blanket Section 214 authorization proposal, it appears that the only thing unique about the unspecified concerns of MCI is that they are unique to MCI. The Commission should not waste any time divining what worries MCI has. BellSouth, like many of the other commenters, encourages the swift adoption of the blanket Section 214 authorization proposal in its expanded form. *See* NPRM at 6.

MCI also wants the Commission to "exclude from blanket authorization any applicant seeking authority to provide international services from any region in the United States in which it has bottleneck control over local facilities." *Id.* According to MCI, these "carriers may have the ability to leverage their control over local facilities to harm competition in the U.S. international services market." *Id.* It appears that MCI is asking the Commission indirectly to reverse its earlier determinations in the Second Report and Order in CC Docket No. 96-149 and Third Report and Order in CC Docket No. 96-61 that a Bell Operating Company ("BOC") interLATA affiliates and an independent Local Exchange Carrier ("LEC") are non-dominant in their provision of in-region international services, absent an affiliation with a foreign carrier with market power in a foreign destination. *See In the Matter of Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area,* CC Docket No. 96-149, *and Policy and Rules Concerning the Interstate, Interexchange Marketplace,* CC Docket No. 96-61, 12 F.C.C.R. 15756, 15838, and 15862-63 (1997) ("*Regulatory Treatment*

Order"), *modified in part, Order on Reconsideration*, 12 F.C.C.R. 8730, 8733 (1997), *stayed in part, Order*, 13 F.C.C.R. 6427 (1998). The Commission determined in those orders that a BOC interLATA affiliate could not "exploit its market power in local exchange and exchange access services to raise prices by restricting its own output in . . . the international market." *Regulatory Treatment Order* at 15838. Therefore, the Commission classified each such affiliate as non-dominant. *Id.* A similar conclusion was reached concerning independent LECs. *See Regulatory Treatment Order* at 15862-63, and *Order on Reconsideration* at 8733. Thus, the Commission has decided that the carriers alluded to by MCI do not have the purported "ability to leverage their control over local facilities to harm competition in the U.S. international services market." Accordingly, the Commission already has rejected MCI's argument. The Commission can dispose of it quickly this time.

BellSouth respectfully requests that the Commission adopt those rule changes discussed herein and reject MCI's arguments as discussed above. Streamlining of the Section 214 authorization process will serve the public interest, convenience and necessity.

Respectfully submitted,

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August 28, 1998

CERTIFICATE OF SERVICE

I hereby certify that I have this 28th day of August, 1998, served a copy of the foregoing REPLY COMMENTS OF BELLSOUTH CORPORATION in IB Docket No. 98-118, by first class mail, postage pre-paid, on the persons listed below, unless otherwise indicated below.

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